

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3844 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  
2. To be referred to the Reporter or not? : YES
  
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  
5. Whether it is to be circulated to the Civil Judge? : NO

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LOK HITRAKSHAK SAMITI

Versus

STATE OF GUJARAT

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Appearance:

GIRISH PATEL ASSOCIATES for Petitioners  
MR S.N.SHELAT, Addl. Advocate General with  
MR.MUKESH R SHAH for Respondent No. 1 & 5  
MR. DUSHYANT A. DAVE, Sr.Counsel with  
MS. RITU BHALLA, MS. HARIPRIYA PADMANABHAN AND  
MR. JAYESH ODEDHRA, Advocates for Resp. Nos. 2 & 3  
MR JAYANT PATEL, Advocate for Resp. No.4

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE D.H.WAGHELA

Date of decision: 28/12/1999

ORAL JUDGEMENT (Per R.K. Abichandani, J.)

The petitioners have moved this Court challenging the decision of the respondents to construct the fourlane toll road from Baroda to Halol and for setting aside the said project. They have sought an order for restraining the respondents Nos. 1, 2 and 3 from executing, implementing or taking any action in pursuance of the decision to construct this four-lane road. They have also sought for an order restraining these respondents from taking possession of the land acquired for the purpose of the said project. They have sought a further direction on them to approach the Central Government i.e. the respondent No.4, for environmental clearance and not to carry on or continue any construction in connection with the project, unless and until such clearance is obtained. A direction is sought on the respondents Nos. 1, 2 and 3 to hold a public hearing inviting the people affected, and that the construction work should be stopped until that is done.

2. When this application came up for admission hearing on 30th August, 1999, the Highway Authority was added as party respondent No.5 and the learned Counsel appearing for the petitioners made it clear at the out-set that though there was a prayer in the petition challenging the four-lane road project, the petitioners do not press for that challenge, but they press for their contention that the provisions of the Notification dated 27.1.1994, which is at Annexure "D" to the petition, have not been followed, though they were applicable. Notice was accordingly issued on the respondents on that point, and the matter has been argued in context of the said Notification dated 27.1.1994, on the question whether environmental clearance was required or not for the said project.

3. According to the petitioners, the petitioner No.1 is an unregistered organisation representing the people from various villages affected by the proposed four-lane road, which is to be constructed on the existing State Highway No.87, by the respondents Nos. 1, 2 and 3, to be known as "Baroda Highway Toll Road". It is stated that the petitioners Nos. 2 to 5 are the villagers affected by the project. According to the petitioners, the construction of four-lane road will cause extensive damage to the environment, the purity of air, the survival of the trees and would cause noise pollution. According to them, the Notification dated 27.1.1994 was

directly applicable in respect of the said project and that the project cannot proceed without the environmental clearance from the Central Government. The respondent No.3 - company incorporated under the Companies Act, 1956 was formed with an objective to contract with the Gujarat State Government and/or its departments etc. for the project. According to the petitioners, at present there is already an existing State Highway No.87, known as Vadodara-Halol-Godhra Highway and its width is 6.5 mtrs with shoulders of 1.5 mtrs. on either side. It is stated that the proposed Highway will be 20 meters wide with a divider and on both the sides of the road, there will be service roads of 3.5 mtrs. each. The new road known as four-lane Toll road will be constructed by elevating the existing two-lane road and by adding elevated lanes on both the sides alongwith the service roads. It is further stated that the people of the area adjoining the existing State Highway No.87 and those using it have never been taken into confidence nor allowed to participate in any decision making process before putting up any four-lane road project. The existing State Highway No.87 is about 100 K.Ms long, while the proposed project will cover about 32 K.Ms i.e. about one third of the existing Highway. The total cost of the project is estimated at Rs. 178 crores and according to the petitioners, the project design would involve radical alteration of the existing two-lane road, which cannot be termed as a mere widening of the existing road. It is contended that the new road will, from every aspect, be different from the existing State Highway. The project would involve destruction of about 966 trees even according to the project authorities, though actually it may be much more than that. According to the petitioners, the first respondent has entered into a contract with the second respondent, due to lack of adequate public resources and in furtherance of the policy of liberalisation and privatisation and for the purpose of execution, the contract has in turn been given as regards the said project to the respondent No.3. It is contended that in the ultimate analysis money will come indirectly from the citizens.

3.1 It is also submitted that the project has been undertaken without adequate study in respect of the present density of traffic along the said Highway No.87 and the anticipated increase of traffic on the proposed four-lane road. It is contended that properties within a distance of 36 mtrs. on the left side and 26 mtrs. on the right side of the road have been compulsorily acquired for the purpose of the road. In paragraph 28 of the petition, it is stated that industries like the

petitioners' factory have grown up on the east of the said road near villages Panchdevla, Ajoj, Khandiwada etc. while the industries and factories on the western side of the road are comparatively few. It is contended that the extension of the existing road by about 40 meters. entirely on the west, could have been brought about at a lesser acquisition cost and it would have caused a lesser disturbance to the existing industries/factories. In paragraph 30 of the petition it is contended that the proposed service roads do not have any plan for laying them out properly now and for maintaining them properly in future and if that is not done, a good deal of advantage at present available to the roadside industries/factories like the petitioners' factory would be lost. In paragraph 33 of the petition it is contended that what will be gained by the said existing industries/factories through the speed, ease and comfort of the four-lane highway, would be lost in the long detours becoming necessary for want of convenient nearby turn-abouts and under-passes. It will be seen from these averments that the petition is an admixture of both public and private interest. Even in paragraph 39 of the petition, it is stated that the first respondent has lost sight of the consideration that the lands in question like those of the petitioners' factory lands were allowed about ten years ago, to be converted into the said non-agricultural user from their original agricultural user, and that the trees which were planted by them as per the condition imposed, will have to be cut down because of this project. It is also contended that representations were made in January, February and April, 1999, as per Annexures "B" and "C", in respect of the said project. When these representations are seen, they have bearing mostly on payment of compensation and other non-environmental aspects such as providing employment etc. and demand for additional compensation and facilities as well as exemption from payment of toll.

3.2 It is then contended in paragraph 52 of the petition that a Notification dated 27.1.1994 (copy at Annexure "D") was issued by the Government of India, which required under Item No.21 of Schedule I thereof that a Highway project except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignment, should have environmental clearance. It is stated that in the present case such a clearance has not been obtained and no public hearing was given as stipulated in the Notification. It is reiterated that the project undertaken is not merely a widening of the existing road, but construction of a new road known as

four-lane toll road by converting the existing two-lane road. It is submitted that the said Highway conversion project should be treated as a new project. It is also contended that the people have a right to know about the projects affecting them and that the project is not formulated in public interest and is unconstitutional and null and void. In paragraph 60 of the petition, they have contended that the acquisition of land by the respondent No. 1 for the purposes of the respondent No.3 was violative of the provisions of Chapter VII of Land Acquisition Act, 1894.

4. The respondents Nos. 1 and 5 have, in their affidavit-in-reply dated 15th October, 1999, stated that the Government had formulated the road policy in December, 1996 and the objective of that policy is to work towards rapid economic and social upliftment and that the road policy is structured for providing an efficient road network across the length and breadth of the State so as to effectively meet with the transportation needs of every sector. It is stated in paragraph 6 of the affidavit-in-reply that the State Government has acquired necessary land for widening the road and that while acquiring the land, necessary formalities as prescribed in the Land Acquisition Act were taken care of and the provisions of Environment Protection Act were also taken into consideration. It is stated that substantial time, effort and money has been invested in the project, which has already commenced. The Notifications acquiring the lands for the purpose, which have been placed on record for information from the Gazette, are not disputed and it appears that the Notification under Section 4 of the Land Acquisition Act was issued on 21st June, 1995 and that Notification referred to the public purpose of the road. The Notification under Section 6 of the Land Acquisition Act was issued on 6th October, 1997, specifying the approximate area of land required for the public purpose of Vadodara-Halol-Godhra four-lane road. These Notifications do not indicate that acquisition was to be of 36 meters on one side and 24 meters on the other. Various survey numbers of different areas specified in the Notification were acquired. It is stated in the affidavit of these respondents Nos. 1 and 5 that necessary Environmental Impact Assessment study for the road was carried out and an application seeking a 'no objection certificate' was made to the Director of Environment, Environment and Forest Ministry, Government of Gujarat on 15th June, 1998, who responded by his letter dated 2nd July, 1998 stating that such a clearance was not required for this project of road widening.

However, the environment concerns indicated therein were to be addressed to, before commencing the work. According to these respondents, no provision of the Environment Protection Act has been flouted and the petition is misconceived.

5. In the affidavit-in-reply of the respondent No.5 sworn on 25th October, 1999, the Special Secretary and Chief Engineer (Special Projects) Roads and Buildings Department of the State of Gujarat, has stated that the concept of widening of road implies addition of lanes to an existing road. It is stated that the expression "widening and strengthening" are technical terms in context of roads. The width of the road is designated in form of lanes which are usually known as single lane, intermediate lane, two lane, four lane etc. It is stated that when the road reaches its design capacity, it needs to be widened to accommodate future anticipated growth in traffic or otherwise there would be a reduction in the level of service leading to increase in road user cost, accidents and congestion. It is stated that transportation planning as practiced in the country have defined the capacity of various lane configurations as stated in paragraph 4 of the affidavit. It is further stated that the decision to widen and strengthen the Vadodara-Halol Road was taken on the basis of the known parameters, since it had exceeded the designed capacity. It is also stated that considering the transport requirements of existing local traffic and of villages along the road and to provide for toll free access along the road, it was decided also to construct an adjacent service roads of intermediate lane standards which would be toll free and allow for bidirectional traffic on both sides of the four-lane road. The proposed road would be in the nature of widening the existing road from two-lane to four-lane alongwith the service roads for local traffic along the margins of the existing road. It is therefore, stated that the project is nothing, but 'widening and strengthening' of the present road and that it does not change the character of the land-use along the road. It is also stated that for such road widening along the existing road, no environmental clearance is required. Reliance is placed on the correspondence annexed at Annexures I, II and III of the affidavit in support of this contention. It is also stated that the said correspondence between the Ministry of Surface Transport and the Ministry of Environment, based on the Union Cabinet decision dated 15.1.1997 shows the intention to exempt the road widening projects from the purview of environmental clearances under the notification as amended on 10.4.1997. It is also stated

that the Vadodara - Halol road was identified for four-laning after a proper study. A further affidavit has been filed showing the recommended land width for different classes of roads, as suggested by the Indian Roads Congress, for National and State Highways in the country, as per which, for a State Highway, the recommended land width is 60 meters.

6. On behalf of the respondent No.4 - Union of India, an affidavit dated 18.11.1999 has been filed, in which it is stated that the Ministry concerned has not received the proposal for environmental clearance in this matter. It is stated that two proposals, namely - one for diversion of 8.00 hectares of forest land on road side in State Highway No.87 between 34.3 K.Ms to 40 K.Ms falling in Panchmahal district and another for diversion of 15.66 hectares of forest land on road side of the same road between 8.2 to 34.3 K.Ms in Vadodara district, were approved by the Government of India by its communications dated 16th June, 1999 and 1st September, 1999. It is stated that the proposals which attract the provisions of the Notification for environment clearance require mandatory public hearing as per the procedure laid down in the Notification. It is contended that considering the facts and circumstances of the case, there is no substance in the petition and the petitioners are not entitled to any of the reliefs prayed for by them.

7. The respondent No.2 in the affidavit-in-reply filed on 15th Sept.1999 has stated that the project was formulated for the purpose of improvement, upgradation, repair and maintenance of a section of the State Highway No.87 between Vadodara and Halol and this had to be done because Vadodara ranks second among the most important industrial and commercial centres in the State of Gujarat and Halol is a township that has developed as an industrial centre due to its proximity to Vadodara. It is stated that the second respondent had prepared a detailed Environment and Social Assessment Report in accordance with the Environment Impact Assessment Notification of January, 1994 issued by the Ministry of Environment and Forest, Government of India. As per the said notification at Annexure "D" to the petition, road widening projects not passing through any ecologically sensitive area are exempted from environmental clearance. It is stated that out of total project cost of Rs. 175 crores, investments to the tune of Rs. 60 crores have already been made. It is further stated that the petition is motivated and is calculated to benefit certain individuals with vested interests.

8. In the affidavit-in-reply filed on behalf of the respondent No.3 on 15th Sept. 1999, it is stated that the project is clearly exempt from the rigours of the Notification dated 27th January, 1994, because the project relates to widening and strengthening of the existing highway. It is pointed out that in order to enable implementation of the policy of the State Government, the Bombay Motor Vehicles Tax Act, 1958 which had earlier prohibited the levy of tolls on motor vehicles utilising roads within the territory of the State was amended not only to enable the Government to levy tolls, but also to enable private enterprises that had undertaken the construction etc. of the road, to collect toll in relation to such roads on such terms and in such manner as may be prescribed. It is also pointed out that second respondent in the year 1966 had appointed Kirloskar Consultants for a detailed study of the project. A summary of the Environmental and Social Assessment Report is annexed at Annexure "B" to the said affidavit. It is stated that as per the Concession Agreement, the respondent No.3 is under an obligation to comply with the Environmental and Social Assessment Report. It is stated that this would ipso-facto reveal that the Vadodara-Halol project is not only environment compliant but there are in-built safety valves and measures for ensuring that the project at all and every stage/phase remains environmentally compliant. It is pointed out that the petition has been filed at the behest of certain motivated interests and that the petitioners have no locus-standi. It is also stated that there has been gross delay in the filing of the petition, inasmuch as the policy decision in the matter was taken as far back as in the year 1995 and the memorandum of agreement was entered into in October, 1995. Moreover, the lands were already acquired from the concerned persons and compensation was paid to them.

8.1 In the further affidavit-in-reply filed on behalf of the respondent No.3 on 4th October, 1999, it is pointed out that on 30th July, 1999, the respondent No.3 had received a letter from the office of the Chief Forest Officer, Social Afforestation, giving permission to the respondent No.3 to cut 829 trees and to transplant 494 trees out of total of 1,323 trees. This has been produced at Annexure "C" collectively to that affidavit. It is stated that the respondent No.3 is committed to plant 5,905 trees per K.M stretch of the Highway, i.e. a total of 1,96,350 trees in the area.

9. The learned Counsel appearing for the petitioners submitted that on a bare reading of the Notification dated 27th January, 1996, as amended on 10.4.1997, this project clearly required environmental clearance without which no work could have been started for converting the existing two-lane highway into a four-lane highway. It was submitted that since such a clearance was required, it was essential to comply with the procedure requiring hearing to be given to the people affected in this matter, which was spelt out in Schedule IV of the said notification. It was submitted that admittedly no such procedure was undertaken and therefore, the project violated the statutory notification which has been issued under Section 3(2)(v) read with Rule 5 (3)(d) of the Rules framed thereunder. It is submitted that this petition is not a motivated petition though it has been filed by persons who are adversely affected by the project, including factory owners. It is submitted that even persons affected can raise the issue not only on their behalf, but all others who were affected and such personal interest will not disqualify the petitioners from approaching the Court. It is submitted that the main issue in the petition is an environmental issue. In environmental pollution, noise and air pollution are important factors to be considered. Pointing out the comparative chart prepared in the affidavit-in-rejoinder filed by the petitioners, it is argued that the nature of conversion of the existing State Highway No.87 into a four-lane Highway shows that the original Highway would lose its identity and what would now be there, would be totally a new Highway. It is pointed out that the existing Highway is a two-lane Highway and none of its portion is elevated and that there are several turnabouts as a result of which the vehicles using the highway are able to avoid long detours, whereas the entire stretch of 32 K.Ms of the proposed highway will have very few turnabouts/underpasses. Moreover, the existing highway is also used by pedestrians and farmers and it is not at all a Toll highway, nor does any of its portion pass through a reserved forest or any ecologically sensitive area. It is therefore, submitted that the new four-lane highway would be totally a different and new highway and not just a widened existing highway. It is also submitted that the concept of delay in public cause should be liberally considered and a few months delay after the representations were made between January and April, 1999 should not come in the way of a petition of this nature.

9.1 It was then submitted by the learned Counsel that item 21 of Schedule I of the said Notification indicated

that only marginal land meaning thereby a small portion of land could be acquired for widening purposes and that if a large area was required to be acquired for the purpose, then the project cannot be termed as a road widening project. It was submitted that a four-lane construction was not simply a widening of the road. It was argued that if the words "with marginal land acquisition along the existing alignment" occurring in Item 21 of Schedule I, are capable of two constructions, then one which is in favour of ecology should be adopted. It is submitted that in view of the provisions of Articles 21, 48A and 51A(g) of the Constitution of India, the interpretation of the said clause should be in favour of environmental protection. The learned Counsel relied upon the decisions of the Supreme Court in Vellore Citizens' Welfare Forum Vs. Union of India and ors., reported in (1996) 5 SCC 647, S.Jagannath Vs. Union of India and ors. reported in (1997) 2 SCC 87 and Suo Motu Proceedings in Re: Delhi Transport Department, reported in (1998) 9 SCC 250 in support of the petitioners' case.

9.2 It was further submitted that the clarification made by the Government of India on 15.10.1999 refers to marginal land acquisition of 20 meters put together on either side of the road and that clarification should be read in the notification itself even if no amendment is made.

9.3 The learned Counsel submitted that the progress of our civilisation need not mimic the western world and that such huge highways are not essential to our cultural surroundings. Referring to a poem written by Tagore, he submitted that for over a century we have been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness, and overwhelmed by the speed and it is high time that the validity of such helpless following should be reviewed and progress be made in consonance with our own cultural values and ethos.

10. The learned Additional Advocate General submitted that the project in question clearly was a road widening project and that the subsequent circular of 15th October, 1999 was merely an administrative reaction of an officer and should not be read in the statutory orders regarding exemption reflected in clause 21 of Schedule I of the Notification. He pointed out that the amendment inserting the exemption clause in item 21 of Schedule I was made precisely with a view to ensure that road

widening did not require any environmental clearance. He pointed out from the letter dated 12th March, 1997 of the Ministry of Environment and Forests, reproduced in Annexure "I" to the affidavit dated 25th October, 1999 of the respondent No.5, that a group was constituted to consider the issues relating to exemption from environmental clearance for road projects along the existing alignments and the recommendation of the group was that the project relating to improvement works including widening and strengthening with marginal land acquisition of roads along the existing alignments irrespective of the cost component may be exempted from obtaining environmental clearance from the Ministry. It was recorded therein that a decision was taken by the Cabinet during its meeting on 15.1.1997 that the road projects on existing alignments which are in the nature of improvement by way of widening the existing roads are to be exempted from clearance from environmental and forestry angles. It is pursuant to this decision that the notification dated 27.4.1994 came to be amended on 10.4.1997.

10.1 The learned Additional Advocate General further submitted that in view of the development that had taken place and keeping in view the future requirements, the four-lane road has been designed on the existing alignment and does not involve any change of route. It was submitted that the bye-passes were planned with a view to cause minimum inconvenience to the villagers through which the highway is passing.

11. The learned Counsel appearing for the respondents Nos. 2 and 3 submitted that the project would have required prior clearance, but for the exception clause added by the subsequent notification dated 10.4.97 in item 21 of Schedule I. He submitted that even in the Stockholm Conference on the Human Environment, the declaration adopted on 16.6.1972 incorporated the principle of economic and social development, which is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life and further that the environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by the States and international organisations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of

environmental measures (principles 8 and 11). He submitted that those who espouse public cause must exercise restraint in moving the Court by not plunging in the areas wherein they are not well versed. He also submitted that PIL should not be a cloak for attaining private ends as was sought to be done in the present case. In support of these contentions, he referred to the decisions of Hon'ble the Supreme Court in Raunaq International Ltd. Vs. I.V.R Construction Ltd. and anr., reported in (1999) 1 SCC 492, S.P.; Anand Vs. H.D. Dewa Gowda, reported in (1996) 6 SCC 734; A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.) and ors., reported in 1999 (2) SCC 718, and, The Janata Dal Vs. H.S. Chowdhary and ors., reported in AIR 1993 S.C 892. Relying on the decision in the case of Bennet Colemn and Co.Ltd. & ors. Vs. Union of India, reported in AIR 1973 SC 106, it was submitted that the Court cannot adjudicate on government policy matters unless the policy is alleged to be malafide. He also contended that the subsequent circular dated 15.10.1999 cannot whittle down the efficacy of the exemption, and on this aspect he relied upon the decisions of the Supreme Court in Beopar Sahayak P.Ltd. Vs. Vishwa Nath and ors. reported in AIR 1987 SC 2111; State of M.P Vs G.S.Dall & Flour Mills and ors. reported in AIR 1991 SC 772, and, Union of India Vs. Diljeet Singh and anr. reported in (1999) 2 SCC 672.

12. As noted above at the admission stage of this petition, as recorded in the order dated 30th August, 1999, the petitioners' Counsel made it clear that though there was a prayer in the petition challenging the four-lane project, the petitioners do not press for that challenge, but they press for their contention that the provisions of the Notification dated 27.1.1994 at Annexure "D" to the petition have not been followed, though they were applicable in the present case. The debate has therefore, centered around the question of applicability of the said notification, which was issued by the Central Government in exercise of its powers under Section 3(2)(v) of the Environment Protection Act, 1986, read with Rule 5(3)(d) of the Rules made thereunder. By this notification the Central Government directed that on and from the date of its publication in the official Gazette, expansion or modernisation of any activity, (if pollution load is to exceed the existing one) or a new project listed in Schedule I of the Notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government as per the procedure specified in the said notification. Any person who desires to undertake a new

project or the expansion or modernisation of any existing industry or project listed in Schedule I has to submit an application for clearance to the Government of India.

12.1 Thus, if any expansion or modernisation of a project which increases pollution or any new project listed in Schedule I is undertaken, it would require environmental clearance unless the item falls in paragraph 3 of the Notification, which, inter-alia, provides that the notification will not apply to any item falling in the entries of Schedule I mentioned therein, if the investment is less than rupees fifty crores. The item No.21 of the Highway projects and projects relating to improvement work would require clearance, if the investment is not less than rupees fifty crores. In the present case, the investment is more than rupees fifty crores and therefore, the question whether the environmental clearance was required for the disputed project arises. The petitioners on one hand contends that the scale of change from two-lanes to four-lanes highway undertaken is clearly a new highway project while on the other the respondents maintain that it is only a road widening project that does not require environmental clearance since it is improvement work that is exempted specifically under the notification.

12.2 This necessitates consideration of item 21 of Schedule I of the said Notification, which reads, under the head "LIST OF PROJECTS REQUIRING ENVIRONMENT CLEARANCE FROM THE CENTRAL GOVERNMENT", as follows:-

1 to 20 xxx xxx

"21. Highway Projects except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignments provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger reserves, Reserve forests."

22 to 29 xxx xxx

12.3 In the present case, the four-lane highway is coming up over the existing highway No.87 which is admittedly a State Highway. The existing State Highway No.87 is only a two-lane highway and its stretch of 32

K.Ms between Vadodara and Halol is sought to be converted into four-lane highway.

13. A Highway in common parlance would be a public road. National and State Highways are statutorily governed by the National Highways Act and State Highways Act. The concept of a State or National Highway is not a nebulous one like Highways dedicated to public as was the case in Municipal Board Mangalore, reported in AIR 1965 SC 1147, wherein it was observed that the width of such highway depends upon the extent of the user. The side lands are ordinarily included in the road for they are necessary for its proper maintenance. The National and State Highways on the other hand are statutorily dealt with. The Parliament has, under item 23 of List II of the Seventh Schedule to the Constitution, exclusive power to make laws with respect to Highways declared by or under the law made by it to be National Highways. The State legislature has under Entry 13 of List II of the Seventh Schedule, power to make laws, inter-alia, with respect to means of communication such as roads, not specified in List I. Thus, Highways would be a matter with respect to which State legislature can make laws. The Bombay Highways Act, 1955 was enacted on 22nd December, 1955 to, inter-alia, provide for the construction, maintenance and development of Highways. It defines 'highway' in Section 2 (i) as under:-

" 'highway' means any road or way over which the public have right of way or are granted access which is declared to be highway under Sec.3. This expression includes,

- (i) any land acquired or demarcated with a view to construct a highway along it;
- (ii) the slopes, berms, borrow-pits, footpaths, pavements and side, catch and boundary drains attached to such road or way;
- (iii) all bridges, culverts, causeways, carriageways and other structures, built on or across such road or way; and
- (iv) the trees, fences, posts, boundary, furlong and mile stones and other highway accessories and materials and material stacked on the road or way;"

13.1 Under Section 3 of the said Act, the State

Government may, by notification in official Gazette, declare a road to be a highway and classify it as a State Highway (Special) or State Highway etc. Under Section 7 of the Act, the State Government having regard to the situation or the requirements of a highway or the condition of the local area through which a highway passes, has power to fix boundary, building and control lines of highways. The State Government is empowered to acquire land for the purposes of Highway under Section 15 of the Act.

13.2 The State Highways are arterial routes of a State linking district headquarters and important cities within the State and connecting them with National Highways or Highways of neighbouring States. A list of State Highways in Gujarat is contained in Annexure-III of the Road Development Plan 1981-2001 for the Gujarat State (Vol.I), published in March, 1987, wherein Vadodara Khandevadi Road appears as State Highway No.87.

13.3 Road designing is a developed science and various considerations go into making a road project. As proclaimed by the Government of Gujarat in the Handbook for Roads (Part-I), published in 1986, in Chapter III on Road Designs, the objectives that must be aimed for the design of the roads are, to provide highway that can carry the designed traffic loading and its economics of construction, is safe to use, and socially and environmentally acceptable as well as aesthetically pleasing. Recommended land width for different classes of road is indicated in table 3.1.2 of the said Chapter and the normal range varies from 30 to 46 meters and 30 to 60 meters for State Highways in respect of open and built up areas in the plain and rolling terrain. The roadway width for single lane, two lane and multilane roads is also indicated. The standard width of carriage way is also prescribed and it is observed that the total width should be determined in relation to design traffic and capacity of the roadway. Depending upon the requirement of the lanes, the road may be single lane, two lane, or multi lane. It is indicated in para 3.3.2(d) that for multilane highways, roadway width should be adequate for requisite number of traffic lanes besides shoulders (also known as 'berms' or 'side width', which are the portions beyond the edges of the carriage way in which vehicular traffic may pass occasionally) and central median. The minimum desirable width of a median on highway is indicated as 5 meters in para 3.3.6.1. We refer to these aspects just to indicate that in the very nature of things the need of a highway, its type, its

width all depend on various factors that can be considered and decided upon by the executive Government in accordance with law.

14. The highway projects can be new or there may be a project for improving an existing highway. Widening of a highway is included in the expression 'projects relating to improvement works of the existing highway' which stand excepted from the rigour of the notification dated 27.1.1994, in view of the amendment made in item 21 of Schedule I by the Notification dated 10.4.1997. This amendment has its background reflected in the letter dated 12th March, 1997 from the Ministry of Environment and Forest, addressed to the Ministry of Surface Transport. The Cabinet had, during its meeting held on 15.1.1997, taken a decision that the road projects on existing alignment which are in the nature of improvement by way of widening the existing roads are to be exempted from clearance from environmental and forest angles. As regards the acquisition of marginal land for improvement of roads along the existing alignment it was stated that the proposal would need to be examined by the concerned Ministry on case to case basis and approve at their end. When a widening project is undertaken for improvement of the existing road, it is obvious that marginal land along the existing road has to be used for the purpose. In this sense, marginal land would mean land on the margins of the existing road-width. There is no restriction on the word widening and when a two-lane existing road is converted into a four-lane road it obviously would be a road widening project and not a new highway project. Such a widening is contemplated in the exemption clause of item 21. It is precisely to meet with a possible contention that widening would not be improvement that the inclusive definition of "improvement work" envelops widening of road along the existing alignment. How much an existing road should be widened is a matter outside the domain of Courts' consideration. The requirement of widening a particular highway would depend on several technical, economic, and social aspects. All that can be said is that when the marginal land is acquired for the purpose of widening the road, the acquisition would have a nexus with the extent of widening. How much land on the margins of an existing highway alignment will be required is a matter that would depend upon extra width which is intended to be added, and, what width is to be added is not a matter for the Court to decide. It is entirely for the executive Government to work out the additional lanes required for widening an existing highway and their nature as also the shoulder and median widths required for the purpose. The exemption would be

rendered meaningless if the work of widening of the existing highways was to be hampered by meter to meter intervention by the Court to examine the justification for such widening. In other words, justification for the extent of road widening would ordinarily not be a justiciable issue, unless it is contrary to law. To read the expression "with marginal land acquisition along the existing alignments" so as to mean that only a marginal, in the sense of "not significant" land can be acquired for the purpose is to totally denude the efficacy of the exemption that enables projects of widening of existing highways to be undertaken without the requirement of environmental clearance, unless the existing road passes through ecologically sensitive areas. In fact, where the department has already got the required land under its ownership, there would be no need for acquisition of any marginal land. In such cases, the widening of the existing highway can be done on the marginal land already available with the Government. This would indicate that the expression "with marginal land acquisition" cannot govern the extent of widening that can be undertaken for the improvement of the existing road. It would therefore be fallacious to say that no widening of road can be done, if it involves acquisition of significant area of marginal land. In our opinion, there is no restriction imposed in the exemption clause on the extent to which the widening of an existing highway can be done, nor can it be implied. There is therefore, no scope, on a plain reading of the exemption provisions contained in item 2 of Schedule I, for holding that if widening of existing road involves acquisition of large areas of marginal land along the existing alignment, clearance is required. Every widening of road to whatever extent it is legitimately done, is clearly exempt from the requirement of obtaining environmental clearance, unless the existing highway passes through an ecologically sensitive area as mentioned in the exemption clause itself. The administrative instructions contained in the letter dated 29th November, 1996 show that compensatory plantation and rehabilitation of displaced persons in cases of additional land acquisition involving cutting of trees on non-forest land or displacement of population are taken care of.

15. The Circular issued by the Joint Secretary to Government of India on 15.10.1999 purports to clarify that marginal land acquisition means land acquisition not exceeding a total width of 20 meters on either side of the existing alignment put together. This was heavily relied upon to argue that no widening which involves more than 20 meters put together on either side of the

alignment can be made. Admittedly there has been no such provision added in the exemption clause for restricting its operation. This circular appears to be just a reading of an administrative officer, of a statutory exemption clause. The statutory clause does not warrant such reading and its operation cannot be restricted by a reading of an administrative officer. The purported clarification falls to the ground when no acquisition of marginal land is required for the purpose of widening, in case where land is already available with the Government for the purpose. This clarification is a misreading of the statutory exemption clause which neither incorporates nor warrants such restriction on the extent of road widening. If at all, such restriction can be imposed only by an amendment in the statutory notification. Moreover, such a clarification could not have been anticipated when the project for widening the road was finalised and undertaken. Therefore, the work of widening the existing highway cannot now be scuttled on the basis of this circular by imposing a requirement of environmental clearance from which road widening has been exempted under clause 21 of Schedule I of the Notification.

16. No challenge against the acquisition of land can be raised by the petitioners in an indirect way by challenging the road widening for want of environmental clearance. The acquisition for road widening was done under the Land Acquisition Act by Notification dated 6th October, 1997 and admittedly, the interested persons including the petitioners did not raise any objection to such acquisition made for the purpose of Vadodara-Halol-Godhra four-lane road as was indicated in Column 4 of the Schedule to the notification acquiring the land. Admittedly compensation was also accepted by those whose land were acquired. The question that excess land was acquired cannot therefore now be raised by the petitioners, more so in the present petition which emphasises the environmental aspects in context of the said notification.

17. The learned Counsel for the petitioners submitted that construction of road is not just an engineering achievement, but it has many socio-economic implications. The whole project, according to him, is "voiceless, futureless, rootless and ruthless growth concerned only with smooth flow of traffic" He submitted that the people had developmental rights because in development process human rights are involved. Therefore, even the policy matters are subject to Constitutional limitations and policy can not provide an iron curtain behind which human

rights can be scuttled. There can be no dispute over the proposition that every policy has to remain within Constitutional bounds and therefore, it cannot violate the fundamental rights guaranteed under the Constitution or be contrary to law. The need to have adequate road transport facilities can hardly be over-emphasised. The construction and maintenance of Highways is not peculiar to western civilisation and the comment of the learned Counsel on the basis of a poem by Tagor that he cited, against being 'dragged by the prosperous West behind its Chariot' is not very apposite and such an approach is not just questioning the 'scientific perfection of the Chariot' but would dig ditches across the path of national progress for which good highways are one of the basic material requirements. This is not to slight the anguish of the learned Counsel that he so passionately expressed but to remind ourselves that our Constitutional goals do take care of balancing public and private interests and that such social engineering is no less than the engineering achievements of road building. We do not enumerate the advantages of highways in our vast country because that would add insult to the injury suffered by those whose private interests were adversely affected, but, as a part of larger populace even they would benefit along with others by the collective progress that may be achieved within the Constitutional bounds. Perhaps it is the evils that are unseen on the surface of even the most laudable projects that cause simmering resentments. But righteous indignation is no ground to twist or restrict the operative statutory provisions, atleast for the Court.

18. We may only add that the State Government by its communication dated 2nd July, 1998 which is on record, took the view that since the said road widening project did not pass through any ecologically sensitive area, it did not require environmental clearance. By communication dated 14th August, 1998, the Government of Gujarat forwarded this letter dated 2nd July, 1998, terming it as an environmental clearance. No one including any of the petitioners seems to have challenged this order under Section 11 of the National Environmental Appellate Authority Act, 1997, under which it is provided that any person aggrieved by grant of environmental clearance can prefer an appeal to the authority.

19. What we have said hereinabove should not be taken to endorse any illegality or as affecting the powers of the Central Government to examine the project of its own, even if no proposal was forwarded to it.

20. We therefore, hold that there is no warrant for interference with the impugned project on the ground that the provisions of Notification at Annexure "D" are violated. The petition is therefore, rejected. Notice is discharged with no order as to costs.

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\* /Mohandas